LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
DEC 21 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

NO. 61

RADIO AND TELEVISION BROADCAST TECHNICIANS LOCAL UNION 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET. AL.,

Petitioners,

VS.

BROADCAST SERVICE OF MOBILE, INC.,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF FOR PETITIONERS

J. R. GOLDTHWAITE, JR.
1431 Candler Building
Atlanta, Georgia 30303

PIERRE PELHAM
First National Bank Bldg. Annex
Mobile, Alabama

Counsel for Petitioners

INDEX

	PAGE
Opinion Below	1
Jurisdiction	1
Questions Presented	2
Constitutional Provisions and Statutes	2
Statement of the Case	3
(a) Evidence as to Integrated Enterprise	7
(b) Evidence as to the Secondary Effect Upon Commerce	10
(c) Evidence of Unfair Labor Practices	11
(d) Further Proceedings in the State Courts	12
Argument:	
1. The Union Conduct Constituted Either Protected Concerted Activity or Unfair Labor Practices Under Section 8 of the Act	12
2. Published Rules of Decision of the Board Demonstrate Clearly That It Would Assert Jurisdiction Over the Labor Dispute	15
(a) Jurisdiction Based Upon the Integrated Enterprise	15
(b) Jurisdiction Based Upon Secondary Effect Upon Commerce	19
3. In Determining Its Jurisdiction the State Court Must Base Its Consideration Upon the Rulings of the Board Under the Facts of the Case	20
Conclusion	24

INDEX TO APPENDIX A

Part A—Constitutional Provisions Involved	1a
Part B—Statutes Involved	2a

TABLE OF AUTHORITIES CITED

FEDERAL COURT CASES

PAGE

Carpenters Local 1976 v. NLRB, 357 U. S. 93 14
Construction and General Workers Union v. *Curry*, 371 U. S. 544 ..... 2, 14
Garner v. Teamsters Union, 346 U. S. 485 15
Guss v. Utah Labor Relations Board, 353 U. S. 1 ..... 11, 15
Hattiesburg Building and Trades Council v. *Broome*, — U. S. ..... 12 L. ed 172 (No. 669, Oct. Term, 1963, decided Apr. 27, 1964) 20
International Brotherhood of Electrical Workers v. *Farnsworth & Chambers Co.*, 353 U.S. 969 ..... 2, 14
Marine Engineers Beneficial Assn. v. *Interlake Steamship Co.*, 370 U. S. 173 23
NLRB v. *A. K. Allen Co.*, 252 F 2d 37 18
NLRB v. *Denver Building & Construction Trades Council*, 341 U. S. 675 ..... 11, 15
NLRB v. *Feinblatt*, 306 U. S. 601 15
NLRB v. *Fruit & Vegetable Packers Local 760*, 377 U. S. 58 14
NLRB v. *IBEW Local 3*, 317 F 2d 193 (CA-2, 1963) 14
NLRB v. *Jones Sausage Co.*, 257 F 2d 878 (CA-4) 18
NLRB v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1 15
NLRB v. *Royal Oak Tool & Machine Co.*, 320 F 2d 77 (CA-6) 18
NLRB v. Servette, Inc., 377 U. S. 46 14
Plumbers Local 100 v. *Borden*, 373 U. S. 690 23
Sakrete, Inc. v. *NLRB*, 332 F 2d 902 18
San Diego Building Trades Council v. *Garmon*, 359 U. S. 236 ..... 2, 15, 21
Smitley d/b/a Crown Cafeteria v. *NLRB*, 357 F 2d 351 (CA-9, 1964) 14
Weber v. Anheuser-Busch, Inc., 348 U. S. 468 ..... 2, 15

Other Cases

PAGE

Alabama Highway Express, Inc. v. *Teamsters Local Union 612*, 268 Ala. 392, 108 S. 2d 350 ..... 6, 22
Radio and Broadcast Technicians Local Union 1264, et al v. *Broadcast Service of Mobile, Inc.*, 1 Division 250 13

National Labor Relations Board Cases

Alpha Corporation, 128 NLRB 309 (1960) 18
Checker Cab Co., 141 NLRB 583 (1963) 18
Corfu Mfg. Co., 48 LRRM 1584 18
Family Laundry, Inc., 121 NLRB 1619 (1958) 18
Houston Building & Construction Trades Council, 136 NLRB 321 (1962) 14
Jemcon Broadcasting Co., 132 NLRB 362 ..... 11, 20
Madison Building and Construction Trades Council, 134 NLRB 517 20
P-M Garages, Inc., 139 NLRB 987, 992 (1962) 18
Plumbers Local 741, 137 NLRB 1125 (1962) 14
Perfect TV, Inc., 134 NLRB 575 (1961) 18
Raritan Valley Broadcasting Co., Inc., 122 NLRB 90 ..... 6, 16
Riley Cartage Co., 110 NLRB 1742 (1954) 19
Teamsters Local 554 (McAllister Transfer, Inc.), 110 NLRB 1769 (1954) 19, 20
Truck Drivers Local 649, 93 NLRB 386 20
Washwell #2, Inc., 139 NLRB 417 (1962) 18

Miscellaneous

Rules and Regulations of National Labor Relations Board, Series 8, as Amended, Subpart H, §102.98, 24 Federal Register 9095 (Nov. 7, 1959, as Amended by 26 F.R. 3885, May 4, 1961, 26 F.R. 7546, Aug. 15, 1961, 27 F.R. 2091, Mar. 3, 1962 and 27 F.R. 5094, Jun. 1, 1962 20

PAGE

Twenty-First Annual Report of the National Labor Relations Board, 1956, pp. 14, 15 ..... 17, 19
Twenty-Third Annual Report of the National Labor Relations Board, 1958, pp. 7-9 16
Twenty-Fifth Annual Report of the National Labor Relations Board, 1960, pp. 18-20 20

CONSTITUTIONAL PROVISIONS

Constitution of the United States; Article I, Sec. 8, Clauses 3 and 18 (Commerce Powers) 2, 1a
Article VI, Clause 2 (Federal Supremacy) 2, 2a

STATUTES

Labor Management Relations Act, 1947; (June 23, 1947, Ch. 120, Sec. 1):
61 Stat. 136, 29 USC 141 ..... 2, 2a

Labor Management Reporting & Disclosure Act, 1959; (Sep. 14, 1959, P.L. 86-257, Title VII, (Sec. 701); 73 Stat. 541, 29 USC 153, 158, 159, 160, 164 & 187 ..... 3, 2a

National Labor Relations Act, as amended by the Labor Management Act, 1947, and by the Labor Management Reporting & Disclosure Act, 1959; (June 23, 1947, Ch. 120, Title I, Sec. 101);
61 Stat. 136, 73 Stat. 541, 29 USC 151 ..... 3, 2a
61 Stat. 140, 29 USC 157 [NLRA, §7] 3, 2a
61 Stat. 141, 73 Stat. 542, 29 USC 158(b) & (c) [NLRA, §8(b) & (c)] 3, 3a
61 Stat. 146, 73 Stat. 544, 29 USC 160(a), (c), (k) & (l) [NLRA, Sec. 10(a), (c), (k) & (1)] 3, 7a
73 Stat. 541, 29 USC 164(c) [NLRA, §14(c)] 3, 10a

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

NO. 61

RADIO AND TELEVISION BROADCAST TECHNICIANS LOCAL UNION 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, WILLIAM RABURN, DAVID TRIDGE, AND H. D. SMITH,

Petitioners,

vs.

BROADCAST SERVICE OF MOBILE, INC.,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF FOR PETITIONERS

OPINION BELOW

The opinion of the Supreme Court of Alabama (R. 402) is reported at ..... Ala. ....., 159 S. 2d. 452.

JURISDICTION

The opinion (R. 402) and judgment (R. 410) of the Supreme Court of Alabama were entered on December 12, 1963. Application for rehearing, filed on December 20, 1963 (R. 411) was denied on January 16, 1964 (R. 414). Petition for certiorari was filed on April 15, 1964 and was granted on October 12, 1964. The jurisdiction of this Court rests on 28 USC 1257(3), since rights, privileges and immunities were set up and claimed under the Constitution and Statutes of the United States and are asserted to have been improperly denied by the Supreme Court of Alabama.

QUESTIONS PRESENTED

I.

Whether the State of Alabama has jurisdiction through its courts to enjoin concerted activity of employees in the course of a dispute with an employer which affects interstate commerce where it is arguable that the National Labor Relations Board, under rules of decision previously issued by it, would assert its jurisdiction under the National Labor Relations Act, as amended.

II.

Did the Supreme Court of Alabama, in reversing the decision of the trial court that it was without jurisdiction because of Federal preemption, act in derogation of the holdings of this Court in *Construction and General Workers' Union* v. *Curry*, 371 U. S. 544; *International Brotherhood of Electrical Workers* v. *Farnsworth and Chambers Co.*, 353 U. S. 969; *San Diego Building Trades Council* v. *Garmon*, 359 U. S. 236; *Weber* v. *Anheuser-Busch, Inc.*, 348 U. S. 468; and other cases.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Constitution of the United States:

Article I, Section 8, Clauses 3 and 18 (Commerce Powers)

Article VI, Clause 2 (Federal Supremacy)

Labor Management Relations Act, 1947:

(June 23, 1947, Ch. 120, §1, *et seq.*; 61 Stat. 136, *et seq.*; 29 USC 141, *et seq.*

Labor Management Reporting and Disclosure Act, 1959:

(September 14, 1959, P. L. 86-257, Title VII, §701, *et seq.*; 73 Stat. 541, *et seq.*; 29 USC 153, 158, 159, 160, 164 and 187)

National Labor Relations Act, as amended by the Labor Management Relations Act, 1947, and by the Labor Management Reporting and Disclosure Act, 1959:

(June 23, 1947, Ch. 120, Title I, §101, *et seq.*; 61 Stat. 136, *et seq.*; 73 Stat. 541, *et seq.*; 29 USC 151, *et seq.*)

61 Stat. 140, 29 USC 157 [NLRA, Sec. 7]

61 Stat. 141, 73 Stat. 542, 29 USC 158(b) & (c), [NLRA, Sec. 8(b) & (c)]

61 Stat. 146, 73 Stat. 544, 29 USC 160(a), (c), (k) & (l) [NLRA, Sec. 10(a), (c), (k) & (l)]

73 Stat. 541, 29 USC 164(c) [NLRA, Sec. 14(c)]

Texts are set out in Appendix A, *infra*.

STATEMENT OF CASE

The petitioning union and Radio Station WAIP in Mobile, Alabama, were parties to a collective bargaining agreement covering the conditions of employment of petitioner David Fridge, a full-time radio technician, and another employee who was a part-time technician. (R. 158, 162, 163, 196, 210, 213) Station WAIP was sold to respondent and the radio technicians were terminated. (R. 154, 155) On August 1, 1962, Respondent began operating the station under the call letters WSIM. (R. 2) After conversations concerning the employment of Fridge and the adherence to standards established by collective bargaining with other radio

stations (R. 210, *et seq.*; 215, *et seq.*, 245, *et seq.*, 250, *et seq.*, 255, *et seq.*) the petitioning union on August 10, commenced peaceful picketing at the premises of Radio Station WSIM with signs which stated "WSIM Non-Union, Local 1264, IBEW, AFL-CIO" (R. 63, 260) and began soliciting advertisers to patronize stations having union contracts rather than to patronize respondent. (R. 260-1) The solicitations were made by letter (R. 11, 262) and personal contact. (R. 262-3)

On August 31, 1962, respondent filed a complaint in the Circuit Court of Mobile County, Alabama, asking that the picketing and solicitation of advertisers be enjoined until an election for the selection of a collective bargaining representative could be held in accordance with Federal law. (R. 1) The union filed a plea to the jurisdiction on September 10, 1962, asserting Federal preemption. (R. 5) On the same date, respondent filed an amended complaint, which substituted for the original, alleging that the picketing and solicitation of advertisers constituted a boycott, illegal under Alabama law, and was a violation of the State's right-to-work law. (R. 25)

On September 12, 1962, petitioners amended the plea to the jurisdiction. The plea, as amended, alleged that respondent is one of a group or chain of four radio stations, known as the Holt Broadcasting Service, the headquarters of which are located in Hattiesburg, Mississippi, and that the other stations comprising the Holt Broadcasting Service are located in Montgomery, Alabama, Hattiesburg, Mississippi, and McComb, Mississippi. The plea averred that the four radio stations are commonly owned and controlled, with Charles W. Holt owning a majority interest in all four stations and being the executive head of all four stations; that a common personnel and labor relations policy prevails

at all four stations; that respondent is part of the integrated financial operation known as the Holt Broadcasting Service; that the volume of business done by the four radio stations greatly exceeds $100,000 per year; that the activities of petitioners constitute protected concerted activity within the meaning of the National Labor Relations Act, as amended; and that the National Labor Relations Board would assert jurisdiction over the operations of respondent as a part of a business substantially affecting interstate commerce. (R. 65) The original plea alleged that the activity of the Union in soliciting secondary employers so substantially affected interstate commerce that the Labor Board would assert jurisdiction for this reason also. (R. 7-8) The plea concluded that the State Court was without jurisdiction because the jurisdiction of the National Labor Relations Board over the labor dispute was exclusive; and that for the State Court to grant injunctive relief would be unconstitutional and in derogation of the authority granted to the United States Congress by Article I, Section 8, Paragraph 3 of the Constitution of the United States to regulate interstate commerce and of Article VI, Clause 2, of the Constitution of the United States providing for the supremacy of the Federal Constitution and the laws enacted pursuant thereto. (R. 9-10)

Following a preliminary hearing the Trial Court issued an interlocutory decree on September 13, 1962, finding the conduct of the petitioners to be violative of Alabama law and enjoining further activity by petitioners. (R. 67)

The case came on for final hearing, following which the Trial Court found that its jurisdiction was preempted by the National Labor Relations Act. A motion to dissolve the injunction was granted and the case was dismissed on May 23, 1963. (R. 388)

Respondent requested reinstatement of the injunction pending appeal which request was granted on May 30, 1963, notwithstanding the earlier ruling of the Trial Court that it was without jurisdiction. (R. 389, 390)

Respondent appealed and on December 12, 1963, the Supreme Court of Alabama, relying upon its previous decision in *Alabama Highway Express, Inc.* v. *Teamsters' Local Union 612*, 268 Ala. 392, 108 S. 2d 350, held (R. 402-410) that the State Court had the prerogative of determining its own jurisdiction, and that the State Court need not base this determination upon a consideration of what the Labor Board would do under the facts of the case. (R. 408) The court held that, since petitioners did not plead nor rely upon the $100,000 jurisdictional standard established by the Board of single radio stations,[1] the State Court had jurisdiction. In so holding the court consciously and deliberately rejected (R. 408) the decisions of the Board in which the Board has held that in cases of commonly owned and controlled related businesses it will consider the impact upon commerce of the entire financial enterprise and will assert jurisdiction over a single corporate segment of the enterprise if the entire enterprise meets the discretionary jurisdictional standard established by the Board for the industry, even though the corporate segment alone does not attain that standard.[2] The Court also ignored the allegations of the plea to the jurisdiction (R. 5, 7) and the evidence in support thereof, which assert that the Board would also exercise juris-

---

[1] *Raritan Valley Broadcasting Co., Inc.*, 122 NLRB 90.

[2] This jurisdictional criteria was specifically relied upon in petitioners' plea to the jurisdiction (R. 65); and twenty such Board decisions were cited to the Alabama Court, both in petitioners' original brief and in their motion for rehearing. (R. 411, 413)

diction because of the secondary effects of the dispute upon commerce.

By motion for rehearing petitioners again pointed out that the plea to the jurisdiction specifically relied upon the jurisdictional decisions of the Board applicable to commonly owned and controlled related financial enterprises, and requested reconsideration of the former judgment (R. 411, 412). The motion for rehearing was denied without opinion on January 16, 1964. (R. 414)

(a) *Evidence as to Integrated Enterprise*

The business of the respondent affects interstate commerce because it operates a radio station under license of the Federal Communications Commission issued pursuant to Federal law; and the Labor Board therefore has "statutory" jurisdiction. The annual volume of gross revenue (advertising sales, etc) of Station WSIM as of the time of the hearing would approximate $60,000 (R. 343) so that the Labor Board would not assume jurisdiction over the operation of the station if it had been a single independent radio station. WSIM, however, is one of four radio stations of which Charles Holt is the majority owner; and Holt is the sole owner of a service corporation which performs accounting, billing and other managerial services for the four radio stations. Holt's wife is a minority stockholder in all four radio stations and Bob Robinson is a minority stockholder in three of the radio stations (Respondent and those in Montgomery, Alabama, and Hattiesburg, Mississippi). Holt is president of three of the radio corporations (Respondent and those in Hattiesburg and McComb, Mississippi) and of the service corporation, and is secretary of the Montgomery, Alabama station. Mrs. Holt is secretary of three of

the radio stations and vice-president of the fourth and is secretary of the service corporation. Robinson is president and manager of the Montgomery, Alabama, radio station and vice-president of the Hattiesbrg, Mississippi, and Mobile, Alabama, radio stations and of the service company. Stan Lightsey is treasurer of all five corporations and vice-president and manager of the service corporation. (R. 323-326, 339, 349)

The service corporation shares office space with the Hattiesburg, Mississippi, station, WHSY, in a building owned by WHSY. (R. 329, 330, 338, 339). Holt and Lightsey have their offices in that building (R. 96). Daily financial reports are forwarded by each station manager to Holt addressed to Lightsey at Station WHSY (R. 97, 98, 304, 331, 332). A copy is sent to Robinson in Montgomery (R. 332). Lightsey handles all bookkeeping, billing of advertisers and payrolls for the four radio stations from the central financial office; and he prepares their annual reports required by the FCC to be separately submitted by each station (R. 323, 326, 342). He supervises the credit policies and participates in the collection of accounts of all four stations (R. 107, 329). Day to day purchases of supplies are reported to Lightsey and paid for by him (R. 328). Each station has a separate bank account, checks on which are written by Lightsey (R. 327) and signed by Holt alone, or by Robinson and Lightsey jointly (R. 108, 109). Lightsey participates in the major financial transactions of all four stations and he made the property appraisal of Station WAIP when it was purchased by the financial enterprise (R. 156, 157). Lightsey visits each station about twice each month, personally undertakes to collect accounts due the station from advertisers (R. 329, 107) and supervises the keeping of the station records (R. 107, 108).

Holt personally visits each station regularly and frequently, usually twice each month (R. 98, 296, 298, 299) and supervises the sales policies of each station, the sales efforts of each salesman and the work of each program announcer. He gives supervision, advice and suggestions as to the conduct of their daily work (R. 86, 99, 104, 187, 299).

Radio equipment is transferred back and forth between the four stations (R. 170, 171). Only two of the stations, Montgomery and Mobile, have a national advertising agent. This agent was employed by Holt and Robinson (R. 145, 340, 341). Holt and Robinson employ the managers and the engineering personnel of the stations (R. 339, 94-96, 113-114, 210-213). They have also employed other personnel for the various stations and employees are interchanged between stations from time to time (R. 84, 94, 95, 110-113, 117, 295). Robinson advised representatives of Local 1264 that the Holt stations were thinking of employing an engineer (radio technician) who would be resident chief engineer in Mobile, and consulting engineer for the other stations (R. 95, 96, 213).

While station managers have authority to hire and fire station personnel, such acts are discussed with Holt or Robinson in advance (R. 112-114, 117); and station managers do not even know the identities of the stockholders and officers of the stations they "manage." (R. 85, 86, 96, 105, 122, 301). Station managers do not have the authority to make decisions as to matters of recognition of labor unions, collective bargaining or other labor relations policies (R. 139, 140, 210, 211). Robinson or Holt make the decisions on these policy matters (R. 93, 100, 101, 215-218); and Holt, Robinson and Lightsey personally participated in the discussions with Local 1264 (R. 215-220). Appellee's Mobile

station manager repeatedly stated that he had no authority to discuss the hiring of radio technicians, the negotiation of a collective bargaining agreement or other matters of labor relations policy with the representatives of the Union (R. 93, 160, 220, 246, 247).

Holt requires the radio stations to announce that they are members of the Holt Broadcast Service (R. 86, 104) and employees of appellee and the other stations refer to the financial enterprise as the "Holt Group" or the "Holt Enterprises" (R. 95, 186, 188). The manager of the Mobile station is in almost daily contact with Robinson concerning the everyday operations of the station (R. 150, 303, 304) and management of the Hattiesburg, Montgomery and Mobile stations is highly integrated in Holt, Robinson and Lightsey. The Montgomery station has annual revenues in excess of $200,000 while Hattiesburg and McComb each have annual sales of approximately $100,000 (R. 242, 243).

(b) *Evidence as to the Secondary Effect Upon Commerce.*

Among the advertisers contacted by letter or in person by Local 1264 and asked to place their patronage with union stations rather than with Station WSIM were Hamm's TV and Appliance Company; Sam Joy Laundry and Cleaners, a chain of a dozen stores; Carvers Sundries, a drug store; Dixie Supply Co., a building materials supplier; the Pepsi-Cola Bottling Co.; Underwood Builders Supply Co., a chain of two stores; Joe Bullard Oldsmobile, Inc, an automobile agency; Delaney's Appliance Mart; Baxter's Clothiers, a two store chain; Jessee French Piano Co., a piano chain store; Adams Furniture and Appliance Co., a two store chain; Delchamps, Inc., an interstate grocery

chain; S & H Green Stamps Store, a national chain; and W. T. Grant Co., a national chain with two stores in Mobile (R. 9, 10, 350, 261, 262).

Mr. Hamm, the only one of these advertisers to testify, testified that he purchased appliances in interstate commerce valued at $127,000 annually (R. 316-319), thereby establishing the statutory interstate commerce jurisdiction of the Labor Board.[3]

Also in evidence is the decision of the NLRB (R. 18-25, 47) in Case #AO-29,[4] in which the Labor Board held in a substantially identical case[5] that, because the petitioners contacted advertisers whose businesses affected interstate commerce with a request that they cease advertising on the radio station, it would assert jurisdiction. Among the advertisers held by the Labor Board to affect interstate commerce substantially was Delchamps, Inc., one of the advertisers listed as having been contacted in this case. The Board found that Delchamps does a gross annual business in excess of $500,000 and purchases goods annually in interstate commerce valued in excess of $50,000. (R. 22)

(c) *Evidence of Unfair Labor Practices.*

There is evidence from which the Labor Board and its Regional Attorney may have been authorized to find that a purpose of the primary picketing was to cause the respondent to recognize the Union as collective bargaining representative of its technician employees and to conclude that the primary picketing violated Section 8 (b) (7) (c) of the Act [29 USC 158 (b) (7) (c)]. (R. 230, 275, 283, 284). If the Regional Attorney so

---

[3] *NLRB v. Denver Building and Construction Trades Council*, 341 U. S. 675; *Guss v. Utah Labor Relations Board*, 351 U. S. 1.

[4] *Jemcon Broadcasting Co.*, 132 NLRB 362 (1962).

[5] The petition for advisory opinion (R. 12-18, 47) illustrates the similarity between the two cases.

concluded, the Act directs him to seek an injunction against the picketing so as to afford summary relief therefrom.[6]

The evidence also authorizes the conclusion that such a purpose did not exist and that the sole reason for the picketing was to advertise that the station was non-union, and thereby seek to protect working conditions established by collective bargaining at other stations in Mobile. (R. 260, 231, 275, 276, 283, 284)[7]

There is no evidence that the solicitation of advertisers was accompanied by any threat, restraint or coercion.[8]

(d) *Further Proceedings in the State Courts.*

Following the denial of the motion for rehearing, petitioners filed a request with the Trial Court that the assessment of damages be stayed pending disposition of the jurisdictional question by this Court. The motion for stay was denied and damages of $2,580 were assessed against petitioners. Petitioners' appeal from that judgment is now pending in the Supreme Court of Alabama[9] but will not be scheduled for argument before April 5, 1965.

ARGUMENT

1. *The Union Conduct Constituted Either Protected Concerted Activity or Unfair Labor Practices Under Section 8 of the Act.*

---

[6] Section 10(l), 29 USC 160(l).

[7] See proviso to Section 8(b)(7)(c), 29 USC 158(b)(7)(c).

[8] See Section 8(b)(4)(ii), 29 USC 158(b)(4)(ii).

[9] *Radio and Broadcast Technicians Local Union 1264, et al v. Broadcast Service of Mobile, Inc.*, 1 Division 250.

Following the purchase of Station WAIP by respondent and the termination of the employment of David Fridge as the station's full-time radio technician, representatives of the Union met with the Company and urged the employment of Fridge by respondent and discussed with respondent the execution of a labor agreement which embodied working conditions common to contracts with other stations in the Mobile area. After two meetings of Union representatives with the manager and two meetings at which the Company's attorney was present, the Union began picketing at the studio of the radio station with signs stating "WSIM Non-Union, Local 1264, IBEW, AFL-CIO," and not claiming recognition by their language. The picketing was at all times orderly and peaceful. (R. 164, 260) Simultaneously the Union distributed a letter to advertisers of the station which made no claim for recognition but which solicited the advertisers to "help us preserve the decent wages and working conditions which we have established over a number of years by placing your advertising with union stations." (R. 11, 350)

The respondent contended below that the request of the Union that it employ Fridge, since WSIM was only employing one technician rather than two as had WAIP, was tantamount to a demand that this non-union employee be terminated and replaced with Fridge. The respondent also contended that the discussions concerning a contract constituted a request for recognition without employed members, and that the picketing was in furtherance of these two objectives. The Union on the other hand contended that its picketing had as its objective only publicizing the fact that WSIM did not employ union members or have a contract with the union.

If the respondent's contentions be correct the conduct of the Union was proscribed by Section 8 (b) (2) of the Act [29 USC 158 (b) (2)] insofar as it sought the employment of Fridge and by Section 8 (b) (7) (c) of the Act [29 USC 158 (b) (7) (c)] insofar as it sought recognition. *Construction and General Laborers Union* v. *Curry*, 371 U. S. 544; *Int. Bro. of Electrical Workers* v. *Farnsworth & Chambers Co.*, 353 U. S. 969.

If the contentions of the Union be correct (there being no evidence that the picketing induced any individual employed by any other employer not to perform the duties of his employment with respect to services to be rendered to WSIM), the conduct of the Union was protected by the proviso to Section 8 (b) (7) (c). *Smitley d/b/a Crown Cafeteria* v. *NLRB*, 327 F 2d 351 (CA-9, 1964); *NLRB* v. *IBEW Local 3*, 317 F 2d 193 (CA-2, 1963); *Plumbers Local 741*, 137 NLRB 1125 (1962); *Houston Building and Construction Trades Council*, 136 NLRB 321 (1962).

There is no contention or evidence that the solicitation of advertisers was attended by threats, restraint or coercion of advertisers in order to cause them to withhold their patronage from the radio station. Had there been any threats, coercion or restraint the Union's activity would have been proscribed by Section 8 (b) (4) (ii) of the Act [29 USC 158 (b) (4) (ii)]. Since there was none such, the solicitation of advertisers was concerted activity protected by the proviso to Section 8 (b) (4). *NLRB* v. *Servette, Inc.*, 377 U.S. 46; *NLRB v. Fruit and Vegetable Packers Local 760*, 377 U.S. 58. ". . . (A) union is free to approach an employer to persuade him to engage in a boycott, so long as it refrains from the specifically prohibited means of coercion through inducement of employees." *Carpenters Local 197* v. *NLRB*, 357 U. S. 93, 99.

"When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by Section 7 of the Taft-Hartley Act, or constitute an unfair labor practice under Section 8, due regard for the federal enactment requires that state jurisdiction must yield. To leave the states free to regulate conduct so plainly within the aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law. Nor has it mattered whether the states have acted through laws of broader general application rather than laws specifically directed toward the governance of industrial relations. Regardless of the mode adopted, to allow the states to control conduct which is the subject of national regulation would create potential frustration of national purpose." *San Diego Building Trades Council* v. *Garmon*, 359 U. S. 236, 244.[10]

2. *Published Rules of Decision of the Board Demonstrate Clearly that It Would Assert Jurisdiction over the Labor Dispute.*

(a) *Jurisdiction Based Upon the Integrated Enterprise.*

After the decisions of this Court in *NLRB* v. *Denver Building and Construction Trades Council*, 341 U.S. 675, and in *Guss* v. *Utah Labor Relations Board*, 358 U. S. 1,[11] a so-called "no-man's land" of labor disputes existed in which the states could not act but in which the Labor Board in its discretion declined to act.

To eliminate this hiatus, Congress in the Labor Management Reporting and Disclosure Act of 1959 amended the National Labor Relations Act by provid-

---

[10] See also *Weber v. Anheuser Busch, Inc.*, 348 U. S. 468; *Garner v. Teamsters' Union*, 346 U. S. 485.

[11] See also *NLRB v. Jones and Laughlin Steel Corp.*, 301 U. S. 1; *NLRB v. Feinblatt*, 306 U. S. 601.

ing that the Board in its discretion may, by rule of decision or by published rules, decline to assert jurisdiction over any labor dispute involving any class or category or employers where in the opinion of the Board the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction. [Section 14 (c) (1); 29 USC 164 (c) (1)]. The amendment also provided that the states shall not be barred from asserting jurisdiction over labor disputes over which the Board declines to assert jurisdiction. [Section 14(c)(2); 29 USC 164 (c)(2)].

The Congressional amendment thus recognizes the pervasive character of Federal jurisdiction by requiring that the Board must first decline to assert jurisdiction before the states may act.

Radio stations are instrumentalities of interstate communications, authorized and operated under Federal regulatory licenses issued in furtherance of the interstate commerce power of Congress. The respondent and all other radio stations are therefore within the statutory ambit of Federal preemption unless the Board has by rule of decision declined to exercise its jurisdiction with respect to a class or category of stations which includes the respondent.[12]

In *Raritan Valley Broadcasting Co., Inc.*, 122 NLRB 90, the Board held that it would not assert jurisdiction over labor relations and labor disputes at single radio stations having an annual sales volume of less than $100,000.[13] Where statutory jurisdiction exists, however, the Board has repeatedly held that its discretion-

---

[12] The Board has not undertaken to publish rules, adopted pursuant to the Administrative Procedure Act, for the guidance of parties and state agencies as to the discretionary exercise of its jurisdiction. They must therefore look to its published decisions.

[13] See *23rd Annual Report of the NLRB*, 1958, pp. 7-9.

ary exercise of jurisdiction will be based upon the totality of the impact upon interstate commerce of an entire integrated financial enterprise rather than upon the impact of a single segment of the enterprise standing alone. The Board has summarized its practice in such cases as follows:

> "a. Integrated Enterprises.—In applying the present jurisdictional standards, the Board early reaffirmed the long-established practice of treating separate concerns which are closely related as being a single employer for the purpose of determining whether to assert jurisdiction. The question in such cases is whether the enterprises are sufficiently integrated to consider the business of both together in applying the jurisdictional standards.
>
> "The principal factors which the Board weighs in deciding whether sufficient integration exists include the extent of:
>
> "1. Interrelation of operations;
>
> "2. Centralized control of labor relations;
>
> "3. Common management; and
>
> "4. Common ownership or financial control.
>
> "No one of these factors has been held to be controlling, but the Board opinions have stressed the first three factors, which go to show 'operational integration,' particularly centralized control of labor relations. The Board has declined in several cases to find integration merely upon the basis of common ownership or financial control."

21st Annual Report of the NLRB, 1956, pp. 14, 15.

All of the factors which have been relied upon by the Board to show integration are present to a marked degree in this case—more so than in many of the cases in which the Board has found such integration to exist

and over which it has therefore asserted jurisdiction. Compare, *The Family Laundry, Inc.*, 121 NLRB 1619 (1958); *Alpha Corporation*, 128 NLRB 309 (1960); *Perfect TV, Inc.*, 134 NLRB 575 (1961); *Washwell #2, Inc.*, 139 NLRB 417, 419 (1962); *P-M Garages, Inc.*, 139 NLRB 987, 992 (1962); *Checker Cab Co.*, 141 NLRB 583 (1963); *Corfu Mfg. Corp.*, 48 LRRM 1584 (Case No. 3-RC-2523, decided June 28, 1961). This exercise of the Board's jurisdictional discretion has received the approval of the Courts in a number of cases. For example, in *Sakrete, Inc. v. NLRB*, 332 F 2d 902, 907:

> "Apart from the argument, which we reject, that the Board's criterion contemplates interrelationship, centralized control and common management at the local level if two companies are to be regarded as a 'single employer,' no other reason is suggested or occurs to us why mutuality of control at the local level must be shown. Seldom would it be practicable for two companies situated in different parts of the country to be managed at the local level by one man or management group. If there is overall control of critical matters at the policy level, the fact that there are variances in local management decisions will not defeat application of the 'single employer' principle.[14]

We conclude, not only that the Board had statutory jurisdiction over labor relations of respondent, but also that under its discretionary jurisdictional rules the Board would affirmatively exercise that authority upon the basis that respondent is an integral part of a

---

[14] See also *NLRB v. Royal Oak Tool and Machine Co.*, 320 F 2d 77, 80-81 (CA-6); *NLRB v. Jones Sausage Co.*, 257 F 2d 878, 879-880 (CA-4); *NLRB v. A. K. Allen Co.*, 252 F 2d 37, 38-40 (CA-2).

financial enterprise which substantially affects commerce.[15]

(b) *Jurisdiction Based Upon Secondary Effect Upon Commerce.*

In *Teamsters Local 554 (McAllister Transfer, Inc.)*, 110 NLRB 1769 (1954), the Board held that in applying its discretionary standards of jurisdiction to cases involving secondary effects of union activity, it will take into consideration not only the operations of the primary employer but also the operations of any secondary employers which are affected by the union conduct. In such cases the Board will assert jurisdiction over the entire labor dispute, including all employers affected thereby, both primary and secondary, even though, independently considered, some of them may not have a sufficient volume of business to meet the jurisdictional standard. *Riley Cartage Co.*, 110 NLRB 1742 (1954); see also *21st Annual Report of the NLRB, 1956*, pp. 12, 13.

In the present case the secondary activity of the Union in soliciting advertisers falls squarely within the ambit of conduct regulated by Section 8(b)(4) of the statute. In a similar case, involving the same Union and another Mobile radio station, the Union requested the Board for an advisory opinion under the rules and

---

[15] A detailed analysis of the cases relied upon in earlier briefs by respondent will not be undertaken at this time. In his memorandum on behalf of the United States, as *amicus curiae*, the Solicitor General points out (Footnote 2, p. 5) that those cases were all decided during a short period when the Board required, in addition to the enumerated four elements, that there be some interchange of employees between the corporations and some uniformity in their labor conditions; and that under the Board's present decisions these factors are no longer required. In addition, all of the cases relied upon by petitioners are comparatively recent ones and reflect the present practice of the Board; whereas those relied upon by respondent are of an earlier period when a differently composed Board followed a more conservative approach, or do not meet the four criteria outlined by the Board in its *Twenty-First Annual Report, supra.*

procedures adopted by the Board to implement the broader duty of decision devolving upon the Board from the 1959 enactment of Section 14(c) of the Act.[16] The advisory opinion of the Board in that case (R. 18, 20)[17] reveals that the activity of the Union there was identical to that in the present case and that some of the same advertisers were contacted in that case as are shown to have been contacted in the present case. (R. 9, 10). The Board held that it would assume jurisdiction of that dispute because Delchamps, Inc., one of the advertisers contacted in the present case, meets the Board's jurisdictional standards. The record also shows that the only advertiser who testified as a witness on behalf of respondent, Paul Hamm (R. 318), purchases goods in interstate commerce valued in excess of $100,000 per year.

This jurisdictional standard was relied upon in the record before the Supreme Court of Alabama and upon this basis also the State Court should have upheld Federal preemption. *Hattiesburg Building & Trades Council* v. *Broome.*, U. S. 12 L ed 2nd 172 (No. 669, Oct. Term, 1963, decided Apr. 27, 1964); *Madison Building and Construction Trades Council*, 134 NLRB 517; *Truck Drivers Local 649*, 93 NLRB 386; *McAllister Transfer Co., supra.*

We believe that under this record it is not even "arguable" that the Board would have declined to assert jurisdiction over the dispute.

---

[16] *Rules and Regulations of the NLRB*, Series 8, as amended, Subpart H, Sections 102.98, *et seq.*, pp. 43, *et seq.* (24 FR 9095, as amended by 26 FR 3885, 26 FR 7546, 27 FR 2091, and 27 FR 5094). See also *25th Annual Report of the NLRB, 1960*, pp. 18-19.

[17] *Jemcon Broadcasting Co.*, 135 NLRB 362 (1962).

3. *In Determining Its Jurisdiction The State Court Must Base Its Consideration Upon The Rulings of the Board Under the Facts Of the Case.*

In its second *Garmon* decision[18] this Court was dealing with the substantive jurisdiction of the Labor Board in stating that: "When an activity is arguably subject to Section 7 or 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interferance with national policy is to be averted." 359 U.S., at 245. The "arguable" concept applies with even greater force to the application of the discretionary jurisdictional standards of the Board. This is clearly demonstrated by a brief historical consideration of the decisions of this Court and the actions of Congress upon the subject. (See subdivision II of Argument, *supra.*) At the time of the *Garmon* decision, the states could not regulate a dispute which affected interstate commerce in excess of the rule *de minimis*. *Guss v. Utah Labor Relations Board, supra.* Thereafter, the language chosen by Congress to permit greater latitude of state action in labor disputes which affect commerce indicates clearly that Congress approved the "arguable" concept and adopted it for application by state courts in making jurisdictional determinations. In adding Section 14(c) to the Act in 1959, Congress provided that the Board in its discretion may by rule of decision decline to assert jurisdiction over any labor dispute or class or category of employers where "the affect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction;" and provided thereafter that nothing in the Act shall be deemed to prevent a state court from

---

[18] *San Diego Building Trades Council v. Garmon*, 339 U. S. 236.

asserting jurisdiction "over labor disputes over which the Labor Board declines, pursuant to paragraph (1) of this sub-section, to assert jurisdiction." 29 USC 164(c)(1) &. (2). Congress thus made it apparent that a state court in determining its jurisdiction must consider and apply the decisions of the Board to the facts of the case and must affirmatively find that the Board would "decline" to assert jurisdiction before it may act.

If it be "arguable" that the Board would assert jurisdiction over a labor dispute, the language of the statute makes it clear that Congress intended to protect the regulatory scheme which it had devised at least to the point of requiring the complainant in the state court to obtain a ruling from the Board that the affect of the dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction.

The Supreme Court of Alabama expressly refuted petitioner's contention in this regard, stating: "Appellee argues that affiliated enterprises of the majority and controlling stockholders of appellant should be considered by the Board in determining whether the jurisdictional standards are met and insists that the court must base its jurisdiction on a consideration of what the Board would do under the facts in this case, and that in any event the case must first be submitted to that body. We cannot agree. We have recently stated that: '. ... the authority is clear to the effect that every court of general jurisdiction has judicial power to determine the question of its own jurisdiction' See *Alabama Highway Express, Inc.* v. *Local 612, etc.*, 268 Ala. 392, 397, 108 So. 2d 350, and cases there cited." (R. 408-409)

Petitioners do not quarrel with the proposition that

a state court must have power to determine its own jurisdiction; but in so doing it must be governed by the rule of law prescribed by Congress for such determinations.[19] To permit state courts, at will, to completely disregard jurisdictional decisions of the Board in making such determinations would negate entirely the specific requirement of Section 14(c) that the state courts may not act in a case unless the Board has "declined" to do so in a guiding rule previously announced by the Board.

In holding that state courts must defer to the exclusive competence of the Labor Board in *Plumbers Local 100 v. Borden*, 373 U.S. 690, this Court reaffirmed its *Garmon* decision, saying:

> "This relinquishment of state jurisdiction, the Court stated, is essential 'if the danger of state interference with national policy is to be averted,' 359 U.S, at 245, and is as necessary in a suit for damages as in a suit seeking equitable relief. Thus the first inquiry, in any case in which a claim of federal preemption is raised, must be whether the conduct called into question may reasonably be asserted to be subject to Labor Board cognizance." 373 U.S., at 693, 694.

This Court has never deviated from the wisdom of that approach, recognizing that working men (and the lawyers who undertake to advise them, we might add) are entitled to know in advance with some reasonable degree of certainty the standards by which their conduct will be judged. Absent this certainty the rights protected to them by the National Labor Relations Act are totally meaningless, for only with that certainty can they undertake to exercise those rights.

---

[19] *Cf., Marine Engineers Beneficial Assn. v. Interstate Steamship Co.*, 370 U. S. 173.

CONCLUSION

For each of the reasons herein urged, the judgment below should be reversed and the judgment of the Trial Court, dismissing the case, affirmed.

Respectfully submitted,

J. R. GOLDTHWAITE, JR.
1431 Candler Bldg.
Atlanta, Ga. 30303

PIERRE PELHAM
First National Bank Bldg.
Annex
Mobile, Alabama

Counsel for Petitioners

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

NO. 61

RADIO AND TELEVISION BROADCAST TECHNICIANS LOCAL UNION 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET. AL.,

Petitioners,

vs.

BROADCAST SERVICE OF MOBILE, INC.,

Respondent.

APPENDIX A TO BRIEF FOR THE PETITIONERS

PART A

CONSTITUTIONAL PROVISIONS INVOLVED

CONSTITUTION OF THE UNITED STATES

Art. I, Sec. 8, Clauses (3) and (18):
Art. VI, Clause (2):

"Art. I, Sec. 8 (Powers of Congress). The Congress shall have Power—

"(3). To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

* * * *

"(18). To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

"Art. VI. Clause 2. Supreme Law.—

"(2). This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

NATIONAL LABOR RELATIONS ACT, ETC.

PART B

STATUTES INVOLVED

LABOR MANAGEMENT RELATIONS ACT, 1947,
and
NATIONAL LABOR RELATIONS ACT,
AS AMENDED
61 Stat. 140 ff, 73 Stat. 541 ff, 29 U.S.C.
Section 157, Section 158 (b) and (c), Section 160 (a), (c), (k) and (l), Section 164:

"Sec. 157. * * *

"Employees shall have the right to self-organize, to form, join, or assist labor organizations, to bargain collectively through representatives of

their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any, or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3)."

"Sec. 158. * * *

"(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9(a);

(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce

to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8(e);

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9;

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in

another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work;

Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of an employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act: Provided further, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;

(5) * * *

(6) * * *

(7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(A) where the employer has lawfully recognized in accordance with this Act any other labor organization and a question concerning representation may not appropriately be raised under section 9(c) of this Act,

(B) where within the preceding twelve months a valid election under section 9(c) of this Act has been conducted, or

(C) where such picketing has been conducted without a petition under section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: Provided, That when such a petition has been filed the Board shall forthwith, without regard to the provisions of section 9(c)(1) or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: Provided further, That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

Nothing in this paragraph (7) shall be construed to permit any act which would otherwise be an unfair labor practice under this section 8(b).

(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor prac-

tice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

"Sec. 160 * * *

"(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

"(b) * * *.

"(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back way, as will effectuate the policies of this

Act: Provided, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: And provided further, That in determining whether a complaint shall issue alleging a violation of section 8(a) (1) or section 8(a) (2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof, such member, or such examiner or examiners as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

"(k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of section 8(b), the Board is empowered and directed to hear and

determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

"(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8(b), or section 8(e) or section 8(b) (7), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: Provided further, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such pe-

riod: Provided further, That such officer or regional attorney shall not apply for any restraining order under section 8(b) (7) if a charge against the employer under section 8(a) (2) has been filed and after the preliminary investigation, he has reasonable cause to believe that such charge is true and that a complaint should issue. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: Provided further, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8(b) (4) (D)."

"Sec. 164. * * *

"(c) (1) The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: Provided, That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

(2) Nothing in this Act shall be deemed to pre-

vent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction."